

SHARTSIS FRIESE LLP
ROBERT E. SCHABERG (Bar #81430)
SIMONE M. KATZ (Bar #246490)
One Maritime Plaza, Eighteenth Floor
San Francisco, CA 94111
Telephone: (415) 421-6500
Facsimile: (415) 421-2922
Email: rschaberg@sflaw.com; skatz@sflaw.com

Attorneys for Defendants
CorMatrix Cardiovascular, Inc., Robert G. Matheny,
David B. Camp, and Beecher Lewis

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DUKE ADVANTAGE, LLC, a company,

Plaintiff,

v.

CORMATRIX CARDIOVASCULAR,
INC., a corporation, ROBERT G.
MATHENY, an individual, DAVID B.
CAMP, an individual, and BEECHER
LEWIS, an individual,

Defendants.

Case No.
Santa Clara Superior
Court Case No. 107 CV085326

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1441(b)
(DIVERSITY); CERTIFICATION OF
INTERESTED PERSONS PURSUANT TO
LOCAL RULE 3-16**

TO THE JUDGES AND THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1441(a), 1446, and 1332,
Defendants CorMatrix Cardiovascular, Inc., Robert G. Matheny, David B. Camp, and Beecher
Lewis (collectively, "Defendants"), hereby remove the above-captioned action from the Superior
Court of the State of California, County of Santa Clara, to the United States District Court for the
Northern District of California, San Francisco Division.

1. On or about May 4, 2007, Plaintiff Duke Advantage, LLC, ("Plaintiff") filed a
Complaint for Breach of Fiduciary Duty, Fraudulent Inducement, Breach of Contract,

FILED
07 JUN -6 PM 3:50
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

C 07

2950

HRL

1 Accounting, and Inspection against Defendants in the Superior Court of the State of California,
2 County of Santa Clara, Case No. 107 CV085326 ("Complaint"), entitled *Duke Advantage, LLC,*
3 *v. CorMatrix Cardiovascular, Inc., et al.* (the "State Court Action"). A copy of the Summons and
4 Complaint as well as all other pleadings received by Defendants are attached hereto as Exhibit A.

5 2. The first date upon which Defendants received a copy of the such Summons and
6 Complaint was May 10, 2007. This Notice of Removal is thus filed within thirty days of the first
7 date of receipt of a copy of the Summons and Complaint by any Defendant and is timely pursuant
8 to 28 U.S.C. § 1446(b).

9 3. This Court has original jurisdiction over Plaintiffs' Complaint pursuant to 28
10 U.S.C. § 1332, because this civil action involves citizens of different states and the matter in
11 controversy exceeds the sum of \$75,000, exclusive of interests and costs, because, among other
12 things, the State Court Action asserts claims which concern and relate to the ownership of and
13 proprietary title to intellectual property, patents and trade secrets whose inherent economic value
14 exceeds millions of dollars. Plaintiffs' claim may be removed by Defendants pursuant to the
15 provisions of 28 U.S.C. § 1441(a).

16 4. Defendants are informed and believe that Plaintiff is a limited liability company
17 that is registered under the laws of the State of Delaware. Please see Paragraph 5 of the
18 Complaint.

19 5. Defendants may properly remove the State Court Action to this Court because
20 diversity of citizenship exists between Plaintiffs and Defendants and the matter in controversy
21 between them is in excess of \$75,000. Accordingly, this Court has original jurisdiction over this
22 action, pursuant to 28 U.S.C. § 1332.

23 6. Venue lies in the United States District Court for the Northern District of
24 California, San Francisco Division, pursuant to 28 U.S.C. § 1441(a) because the State Court
25 Action was filed and is pending in this district.

26 7. Defendants will give notice today of the filing of this Notice of Removal to
27 Plaintiffs and to the Clerk of the Superior Court of the State of California in and for the County of
28 Santa Clara. The Notice of Removal is concurrently being served on all parties.

1 WHEREFORE, Defendants pray that the State Court Action be removed from the
2 Superior Court of the State of California in and for the County of Santa Clara to this Court.

3 DATED: June 6, 2007

SHARTSIS FRIESE LLP

4
5 By: R. E. Schaberg
6 ROBERT E. SCHABERG

7 Attorneys for Defendants
8 CORMATRIX CARDIOVASCULAR, INC.,
9 ROBERT G. MATHENY, DAVID B. CAMP,
10 AND BEECHER LEWIS
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 94111

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

(PURSUANT TO LOCAL RULE 3-16)

Pursuant to Civil Local Rule 3-16, the undersigned, counsel of record for CorMatrix Cardiovascular, Inc., Robert G. Matheny, David B. Camp, and Beecher Lewis, on information and belief, certifies that there are no additional persons, associations or persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding.

DATED: June 6, 2007

SHARTSIS FRIESE LLP

By: R. E. Schaberg

ROBERT E. SCHABERG

Attorneys for Defendants
CORMATRIX CARDIOVASCULAR, INC.,
ROBERT G. MATHENY, DAVID B. CAMP,
AND BEECHER LEWIS

7469\002\NBIGLEY\1435741.1